
(1975) 12 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ No's. 2205, 2206, 2243 of 1973 and 121, 195, 1127 to 1132 and 1347 of 1974 etc.

Gordhanlal Ramgopal and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-12-1975

Acts Referred:

Constitution of India, 1950 — Article 19, 301, 358

Citation : AIR 1976 Raj 151 : (1976) RLW 79

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Advocate : Hastimal Parakh, S.S. Purohit and Dalpat Raj, for the Appellant; S.K. Tiwari, A.A.G.-Cum-Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.M. Lodha, J.—This order will dispose of a bunch of similar writs mentioned above, as the point involved in all these cases is the same. By these writ applications the petitioners have challenged the validity of Clause 4-A of Para. 3 of the Rajasthan Foodgrains (Prevention of Hoarding) Amendment Order, 1973 (which will hereinafter be referred to as "the Amendment Order"). Clause 4-A reads as under;

"4-A--Fixing Maximum limit of foodgrains in possession by a dealer:--

NO dealer shall have in his possession at any one time, all foodgrains taken together in quantity exceeding 150 quintals including the quantity of wheat as prescribed under the Rajasthan Wheat (Regulation of Trade) Order, 1973."

2. It may be pointed out that prior to the aforesaid amendment, the relevant provision was Para. 3 of the Rajasthan Foodgrains (Prevention of Hoarding) Order, 1973 (which will hereinafter be referred to as "the Order"). Para. 3 reads as under:

"3. Restriction on possession of food-grains exceeding the maximum fixed.--No person shall have in his possession at any one time, foodgrains-

(a) if he is a producer of wheat, in quantity exceeding 20 quintals of wheat or in quantity exceeding 45 quintals of all foodgrains taken together;

(b) if he is a dealer, wheat in quantity exceeding 50 quintals or in quantity exceeding 100 quintals of all foodgrains taken together;

(c) in any other case, wheat in quantity exceeding 10 quintals or in quantity exceeding 25 quintals, of all foodgrains taken together; unless he has submitted a declaration of such stock in the manner and to the officer specified in Clause (4)."

3. The cases of the petitioners came under Para. 3 (c) of the Order as extracted above. There is no gainsaying the fact that under the said Order a dealer in grain was at liberty to have in his possession wheat in quantity exceeding 10 quintals or in quantity exceeding 25 quintals of all foodgrains taken together on submitting a declaration of his stock in the manner and to the officer specified in Clause (4).

4. However, it is clear from Clause 4-A of para. 3 of the Amendment Order that no dealer could have in his possession at any one time, all foodgrains taken together in quantity exceeding 150 quintals. The Amendment Order came into force at once i.e., on 10th December, 1973, the day it was issued. The grievance of the petitioners is that absolutely no time, much less a reasonable time, was granted to the petitioners for disposing of the foodgrains in their possession exceeding 150 quintals. Thus the Amendment Order, according to the learned counsel for the petitioners, was of a confiscatory nature and the restriction placed by Clause 4-A was most unreasonable, inasmuch as, by no stretch of imagination the petitioners could have disposed of the excess quantity of foodgrains in their possession, as the Amendment Order came into force at once. It is submitted that seizure of the foodgrains in possession of the petitioners under Clause 4-A of para. 3 of the Amendment Order was illegal and amounted to unreasonable restriction on the petitioners' right to trade as guaranteed by Article 301 of the Constitution of India. In support of his contention, learned counsel has relied upon *Oudh Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others*, wherein their Lordships were pleased to observe as follows:--

"It must be remembered that right to trade is a guaranteed freedom. That right can be restricted only by law, considered by the Courts as reasonable in the circumstances. Not only the law restricting the freedom should be reasonable, the orders made on the basis of that law should also be reasonable. It is clear that the sugar released for sale in the open market will have to be ordinarily sent out of the States in which they are produced. For doing so, the concerned producers will have to enter into contracts with dealers at far off places. Thereafter the sugar will have to be transported to places of disposal mainly through railways. Taking all the circumstances into consideration, we do not think

that the period of 30 days given for disposal of the sugar is in any manner generous. That being so, we are clearly of the opinion that the 26 days' time given to the appellants for the disposal of the sugar cannot be considered as reasonable."

5. The observations of their Lordships extracted above apply with full force to the facts and circumstances of the present case, which, in my opinion, stands on a higher footing than the case before their Lordships because in the present case absolutely no time was granted for disposal of the excess quantity of the foodgrains which the petitioners were legitimately in possession of on the day the Amendment Order came into force.

6. Dr. S. K. Tiwari, learned Additional Advocate-General has, however, opposed the writ applications on the ground that since on account of the emergency Article 19 of the Constitution of India is suspended, the petitioners cannot take shelter under it and cannot be heard to urge that the impugned piece of legislation violates the fundamental rights guaranteed under the Constitution. The contention, however, has no substance in view of Article 301 of the Constitution which clearly provides that subject to other provisions of this Part (Part XIII), trade, commerce and intercourse throughout the territory of India shall be free. Article 358 of the Constitution no doubt provides that while a Proclamation of Emergency is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

7. The freedom declared by Article 301 is in very wide terms and applies to all forms of trade, commerce and intercourse and it is subject to certain restrictions specified in Articles 302 to 305 of the Constitution. Thus the guarantee under Article 301 imposes a restriction on the legislative power of the Parliament or the State Legislature. Article 358 no doubt suspends Article 19 but Article 301 remains in operation.

8. In *Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others*, it was held that both under Article 19 as well as under Article 304(b), the Yardstick of reasonableness would be the same. In this view of the matter, suspension of Article 19 of the Constitution, in my opinion, would not come in the way of the petitioners for challenging the reasonableness or otherwise of the restriction placed by virtue of Clause 4-A of para 3 of the Amendment Order on the basis of Article 301 of the Constitution of India. In other words, suspension of Article 19 of the Constitution on account of emergency would be no ground for depriving the petitioners of the desired relief.

9. Learned counsel for the petitioners also relied upon, *Partap Singh Kadian Vs.*

The State of Punjab and Others, in support of his contention wherein the same question was examined from a different standpoint and it was held that Article 358 is prospective and applies to fresh legislation or new law enacted by the State during the continuance of emergency and makes it immune from attack under Article 19 during the continuation of the emergency and is not intended to protect or validate any pre-emergency legislative provision which would be invalid because of the constitutional inhibitions before the proclamation of emergency. On these premises the learned Judges held that the 1974 Punjab Order issued under the powers conferred u/s 3 of the Essential Commodities Act must be, in the eye of law, deemed as an integral part of that Act and since that Act being a pre-emergency legislation is subject to Article 19 even during the emergency, the 1974 Punjab Order emanating from that Act and being in continuation of its policies can be challenged as being violative of Article 19(1)(f) and (g) during the emergency.

10. The above quoted Punjab and Haryana case no doubt supports the contention of the learned counsel for the petitioners that the validity of the impugned piece of legislation can be examined even on the touchstone of Article 19 of the Constitution. But I do not consider it necessary to examine this question, as in my view, even apart from Article 19 of the Constitution, Article 301 of the Constitution clearly comes to the aid of the petitioners for challenging the validity of the impugned provision of law in the present case.

11. As a result of the foregoing discussion, I allow these writ petitions and strike down Clause 4-A of para. 3 of the Amendment Order as being unreasonable. Any action taken under it shall be deemed to be null and void. The seizure of the foodgrains as well as the prosecution of the petitioners on account of the alleged violation of Clause 4-A, referred to above, are hereby quashed. There will be no order as to costs.